IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEURIG, INCORPORATED, Plaintiff, v. KRAFT FOODS GLOBAL, INC., TASSIMO CORPORATION, and KRAFT FOODS INC., Defendants.	)	Civil Action No. 07-017 (GMS)

ORDER

WHEREAS, on January 10, 2007, the plaintiff, Keurig, Incorporated, ("Keurig") filed this patent action against the defendants, Kraft Foods Global, Inc., Tassimo Corporation, and Kraft Foods, Inc., (collectively, "Kraft"), alleging that Kraft infringed U.S. Pat. No. 6,607,762 (the "'762 patent");

WHEREAS, on April 9, 2008, Kraft submitted a letter requesting permission from the court to file a motion for summary judgment (D.I. 85);

WHEREAS, on April 16, 2008, Keurig filed a letter in opposition to Kraft's request (D.I. 91), to which Kraft replied five days later (D.I. 92);

WHEREAS, Kraft's proposed motion for summary judgment would assert invalidity of the '762 patent based upon the public use of the Kenco Singles Cartridge ("Singles Cartridge"), a product embodying asserted claims of the '762 patent, more than one year before the '762 patent's date of application[1];

WHEREAS, a court should grant a motion for summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

[1] 35 U.S.C. § 102(b).

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"[2]; and

WHEREAS, Kraft's proposed motion would raise genuine disputes of material fact with respect to the Singles Cartridge's alleged public use, whether the Singles Cartridge embodied the asserted claims of the '762 patent, and whether the Singles Cartridge is more or less permeable to oxygen than the accused T-Disc product;

IT IS HEREBY ORDERED THAT:

Kraft's Request for Permission to File a Motion for Summary Judgment (D.I. 85) is DENIED.

Dated: May 5, 2008

/s/ Gregory M. Sleet
CHIEF, UNITED STATES DISTRICT JUDGE

[2] Fed. R. Civ. P. 56(c); *Biener v. Calio*, 361 F.3d 206, 210 (3d Cir. 2004).